BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of	:	
	:	
DELTA AIR LINES, INC.	:	
SOCIETE AIR FRANCE	:	Docket OST-2001-10429
ALITALIA-LINEE AERRE ITALIANE-S.p.A.	:	
CZECH AIRLINES	:	
	:	
Under 49 U.S.C. §§ 41308 and 41309 for approval of	:	
and antitrust immunity for alliance agreements	:	
	:	

Comments of the Air Carrier Association of America

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Date: January 4, 2002

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Comments of the Air Carrier Association of America

On October 2, 2001, the Air Carrier Association of America ("ACAA")[1] filed in opposition to the application submitted by Delta Airlines, Inc., Societe Air France, Alitalia-Linee Aeree Italian S.p.A., and Czech Airlines (the "Delta Alliance"). In that filing, ACAA stated that in light of the impact the Delta alliance would have on domestic competition, before the Department of Transportation ("Department") approves this alliance and request for antitrust immunity, the Department must first take steps to promote domestic competition. Specifically, ACAA asked the Department to 1) open domestic markets 2) review anticompetitive complaints filed against Delta, and 3) complete CRS rulemaking.

On December 21, 2001, the Department issued a Show Cause Order tentatively approving the proposed alliance and request for antitrust immunity. In doing so, the

[1] ACAA full-time members are AirTran Airways, Inc., Spirit Airlines, Inc., Vanguard Airlines, Inc., Frontier Airlines, Inc. and Sun Country Airlines, Inc. Associate members include small and medium sized communities and airports.

Department dismissed ACAA's request that domestic competition issues be addressed stating:

> As to the domestic competition issues, we will not address them in this proceeding. The Department is currently dealing with these concerns in other proceedings, and we find that the issues raised by the ACAA are more appropriately considered in these other fora.

ACAA finds this statement is puzzling. Exactly in what other fora are these issues being addressed? Some issues pertaining to entry into domestic markets were to be considered in the following proceedings: OST-01-9854 "Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport", and OST-01-9849 "Market Based Actions to Relieve Airport Congestion and Delay". Both of these proceedings have been suspended indefinitely. Moreover, neither proceeding dealt with opening up Reagan National Airport. Under the Department's "suspended" Policy Options for Managing LaGuardia Airport, some new entrants were limited to two roundtrips and no new entrant can operate more than 10 roundtrips, although the high density regulations have no such restrictions. That certainly doesn't address this issue.

While new entrants are limited at high density airports, the nation's largest carriers have no limitations on slot holdings and operate more than ten roundtrips to their primary hubs. This is not competition. These rules block new entrants from fairly competing. Despite dramatic changes in the airline industry, the Department has not even proposed changes to the high density regulation (other than because of Congressional mandate) for the past fifteen years. All proposals submitted by ACAA or others even for minor changes have been dismissed. For example, in response to a request that the Department withdraw and reallocate temporarily held 2100 hour air carrier slots at Reagan National Airport, the Department stated:

> The FAA does not find it practical to hold a lottery solely for eight slots in the same hour. While new entrants and limited incumbents are given preference respectively in a lottery proceeding, the FAA does not believe that a new entrant would be able to introduce meaningful service by only using 2100 hour slots.
>
> [Docket #6240, Order 99-11-4, p.4]

On December 11, 2000, the FAA responded to the ACAA's July 20 petition to withdraw and reallocate temporarily allocated slots and acknowledged:

> It must be recognized that the carriers that have received these temporary allocations agreed to use these slots with the condition that the FAA could recall them at any time.

Although the agency admitted that it has authority to withdraw the temporary slots and the carriers utilizing those slots understood that the slots would be recalled, the FAA letter adds that the, "Department of Transportation finds that the interruption of this service is not in the public interest at this time." Apparently, the Department does not believe that domestic competition is in the public interest. In response to another request, the FAA stated that they were too busy to address these issues. Although the Department apparently believes that it must make slots and airport facilities available before it approves international alliances, why are domestic slot and airport issues continuously shelved for future consideration? Why would the Department be driven to help Delta (and other large carriers) strengthen its international and domestic hubs but dismiss the ability of a new entrant to compete?

With respect to addressing complaints against large carriers for anticompetitive behavior, ACAA and its members have not seen any action by the Department on the complaints filed. Complaints involving anti-competitive behavior have been before DOT for several years, including one filed by Mike Hatch, Minnesota Attorney General, on April 23, 1999. None have been addressed.

Finally, the CRS rulemaking which was initiated in 1997 has still not been completed. Despite the urging of the travel agency industry, state attorneys general, and low fare carriers, the Department has still not suspended Sec. 255.10(a), a CRS regulation which large carriers utilize to eliminate competition. In its latest filing with the Department of Transportation on the proposed American Airlines/British Airways alliance, the Department of Justice stated:

> Several characteristics of the airline industry increase the ability of carriers to engage in coordinated interaction. Most importantly, carriers have almost instantaneous knowledge of competitor's fare changes and the ability to quickly respond to any changes….Furthermore, although information on unpublished fare competition is certainly less perfect than for published fares, carriers are still able, from ARC and CRS data, **to identify corporations and travel agencies where they are losing business and usually the competitor that is gaining business at their expense. Carriers thus have the ability to identify and retaliate against competitors reducing even off-tariff fares.**
>
> [OST 2001-11029-29, p 28]

Clearly, this is an issue that needs to be addressed as it relates to international and domestic competition. Considering that we continue to see consolidation in the industry, it is essential that the Department conclude this rulemaking immediately and not again put it on some future list of items to address.

It is time for the Department to live up to its statutory obligation to promote new entry and competition within the United States. Since the Department has failed to address these domestic issues in other proceedings and initiatives, it should consider them prior to making a decision on the Delta alliance and request for antitrust immunity, when approval of Delta's requests will further its control of domestic markets. While ACAA respects the Department's efforts to promote "open skies" agreements and international alliances, it believes the Department can simultaneously take action to help American

consumers by opening domestic markets and promoting domestic competition. When the Department puts off or defers addressing domestic competition issues, consumers lose important travel options. If the Department does not take immediate action on the issues raised herein, competition will further be eroded and deregulation will be threatened.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2002, a copy of the Comments of the Air Carrier Association of America, was served upon the parties on the attached service list.

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